IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10280 of 1999

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DOLATRAI VALLABHJI OZA

Versus

STATE OF GUJARAT & Ors.

Appearance:

1. Special Civil Application No. 10280 of 1999

MR ANSHIN H DESAI for Petitioner

MR M.R MENGDEY AGP for Respondents No. 1 & 2

MR RA MISHRA for Respondent No. 3

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 16/08/2004

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner before this Court is a retired Primary School Teacher. Feeling aggrieved by the inaction of the respondents with respect to the finalization of the petitioner's pension case, the petitioner has preferred the present petition.

The petitioner came to be appointed as Primary School Teacher in the year 1957. At the time of his appointment, on the basis of the school leaving certificate produced by the petitioner, his date of birth was recorded as of 1st July, 1935. On 21st June, 1969, the petitioner made application to the District Primary Education Committee, Junagadh. By the said application, the petitioner stated that his actual date of birth was 10th October, 1938, the date of birth as recorded in the birth register maintained by the concerned authority at Keshod. In support of his claim, he had produced the said birth certificate and the birth certificates issued in respect of his brother and sisters, certain affidavits, the date of vaccination, etc. The said application was accepted by the District Primary Education Committee. The District Primary Education Officer, by Order dated 6th July, 1970 directed to alter the entry made in the service book of the petitioner with respect to the date of birth of the petitioner. Accordingly, the petitioner's birth date was altered from 1st July, 1935 to 10th October, 1938. The petitioner continued in service till he attained the age of 58 years. On attaining the age of 58 years, the petitioner was retired from service on 31st October, 1996. When the petitioner's pension case was processed, an objection was raised by the concerned authority with respect to alteration made in the service book of the petitioner. After some correspondence, by letter dated 18th November, 1999 made by the State Government, the Director of Primary Education was informed that the aforesaid alteration made in the service book of the petitioner was unauthorized, the petitioner's case be processed as if he had retired from service keeping in view his date of birth as that of 1st July, 1935. Feeling aggrieved, the petitioner has preferred the present petition.

Pending the present petition, in view of the interim order dated 16th October, 2003 [Coram : H.K Rathod, J.], the petitioner's pension case has been processed on the basis of the date of birth originally recorded in the service book i.e., 1st July, 1935. The petitioner has been paid retirement dues accordingly.

The preparation and maintenance of service book

of a servant is governed by Rule 171 of the Bombay Civil Service Rules. It is true that unless an erroneous entry of the birth date of a Government servant has been entered in the service book on account of some clerical mistake, it is the State Government alone which has the power to order alteration in entry with respect to the birth date of a Government servant. In the present case, it cannot be said that 1st July, 1935 was recorded as the birth date of the petitioner in his service book erroneously on account of some clerical mistake. The District Primary Education committee, therefore, could not have made alteration in the service book as requested by the petitioner. Besides, materials produced by the petitioner i.e. the affidavits, vaccination reports, birth certificates issued in respect of his brother and sisters would not be sufficient to hold that the entry made in the service book on the basis of the school leaving certificate at the time of entry in service was erroneous. Further, the said entry continued for more than 12 years. After 12 years in service, the petitioner raised dispute with respect to his date of birth which could not have been accepted for asking. The alteration in question made by the District Primary Education Officer was unwarranted and was contrary to Rule 171 of the Bombay Civil Services Rules.

However, it should be noted that the said alteration was made as far back as in the year 1969, the same continued till the petitioner reached the age of superannuation, considering the aforesaid altered date of birth. Indisputably, the petitioner has served till 31st October, 1996. No steps were taken to cancel the alteration made in the service book while the petitioner was in service. I am, therefore, of the opinion that there is no justification in not accepting the fact that the petitioner did serve till 31st October, 1996. The petitioner, therefore, should be entitled to retirement benefits on the basis of date he retired from service and pay and allowances he received on the date of his retirement.

In above view of the matter, the petition is allowed. It is declared that the petitioner is entitled to retirement benefits considering the date he retired from service i.e. 31st October, 1996 and the pay & allowances received by him on the date of retirement. The pension case of the petitioner be accordingly finalized and the arrears of pension and other retiral benefits be paid to the petitioner within four months from today. As I have held that the District Primary Education Committee had no authority to make alteration

in the service book of the petitioner and that the petitioner's continuance in service on the basis of altered entry with respect to his date of birth was unlawful, the petitioner would not be entitled to interest or damages in any other form over such amount of pension and other retiral benefits.

In the event, the respondent fails to finalize the pension case of the petitioner and pay the difference of amount of pension and other retiral benefits by 31st December, 2004, the petitioner will be entitled to cost of Rs. 50/= for every month or part of a month of delay in making such payment

Rule is made absolute in the above terms. The parties shall bear their own costs.

{Miss R.M Doshit, J.}

Prakash*